(2)

1/151

Single Bench

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR,

CIVIL REVISION No. 145 /2005.

APPLICANT/: DEFENDANT

Smt. Fatema Begam, Wd/o Late Mohammad Ibrahim (W/o Sikander Khan Wrongly Written by Non-applicants in the Plaint), Aged about 54 years, R/o Lalpur, Baghbahara, Tehsil & District Mahasamund, (C.G.)

VERSUS

NON-APPLICANTS / PLAINTIFFS

1. Idrish S/o Late Mohammad, Ibrahim, Aged about 50 years,
2. Shabbir S/o Late Mohammad, Ibrahim, Aged about 47 years,
3. Hafij S/o Late Mohammad, Ibrahim, Aged about 45 years,
4. Wahid S/o Late Mohammad, Ibrahim, Aged about 43 years,

No-applicant No.1, 3 & 4 R/o Khavabada, Nanidaman, Post, Thana & District Daman, Union Territory of Daman & Dew, India PIN Code 296 310

Non-applicant No. 2, Occupation Business, Present Address R/o Main Road, Saraipali, Tehsil Saraipali, District Mahasamund (C.G.). Original R/o Khavabada, Nanidaman, Post, Thana & District Daman, Union Territory of Daman & Dew, India PIN Code 296 310

12.12.05 Hanif

P.R. No. 3084/05
Presented by Advt. Satyendra Shy
dated 05/12/05

REVISION UNDER SECTION 115 OF CODE OF CIVIL PROCEDURE.

एडव्होकेट पत्र

(31)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(114)

आदेश पत्रक

मामला क्रमांक CR 1451 सन् 2005

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	17.04.2006 Shri Satyendra Sahu, counsel for the applicant/ defendant. Shri Manoj Paranjape, counsel for the non-applicants / plaintiffs. Learned counsel for both the parties pray to hear the matter and to decide it finally. Considered. Allowed. Learned counsel for both the parties are heard finally. Non-applicants / plaintiffs filed a suit for declaration *inter-alia* on the ground that applicant / defendant is not the legally wedded wife of late Ibrahim Khan, therefore, it be declared that they alone are the title holders of the suit property. Applicant filed an application under Order VII Rule 11 of the CPC for dismissal of the suit stating that in earlier suit No.33-A/98 Ibrahim Khan Vs Purushottam, the Court had already decided that applicant and non-applicants are joint owners of the suit property. Learned Court below held that principle of res-judicata is not attracted to the instant case as in earlier suit, parties were different and the dispute was also different, therefore, vide impugned order dated 22.11.2005 dismissed the application. Admittedly, deceased Ibrahim Khan filed a suit against Purushottam for eviction. During pendency of the suit, Ibrahim Khan	

[पीछे देखिये

एडव्होकेट पत्र

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XI-HC-22

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आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

died. Non-applicants claiming themselves to be legal representatives filed an application for their substitution. At the same time, applicant Smt Fatima Begum also filed an application for substitution claiming herself the second wife of Ibrahim Khan. The Court below after enquiry, held the non-applicants children of Ibrahim Khan and Fatima Begum second wife of Ibrahim Khan therefore, passed an order to substitute all of them as legal representatives in place of Ibhrahim Khan, thereafter the suit was tried and disposed of. Here, in the instant case, non-applicants / plaintiffs have challenged the validity of the marriage of Fatima Begum with Ibrahim Khan and also claimed that she was divorced by Ibrahim Khan vide written divorce dated 20.05.1997.

In the earlier suit, only for collateral purposes to bring the legal representatives on record, the question regarding legal representative was determined by the Court, but, in the instant suit the validity of marriage is under challenge as also a dispute regarding her divorce with Ibrahim Khan has also been raised.

It is manifest that in the instant suit the issues raised in between the parties were not the issues directly and substantially involved in the earlier suit. That apart, the rights claimed in the suit, does not bar the suit from taking cognizance of it by Civil Court,

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आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
मैं	therefore, under Order VII Rule 11 of the CPC the suit was not liable to be dismissed. Learned trial Court did not commit any error by passing the impugned order that may call for any interference by this Court. Therefore, the revision is liable to be dismissed summarily and is dismissed accordingly. In the light of above order, M.(C.)P.No.428/2006, IA Nos.55/2006 & 994/2006 stand disposed of. **Sd/-** **Vijay Kumar Shrivastava** **Judge**	

padma

[पीछे देखिये